

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

ALBERT FORD,

Plaintiff,

v.

JAMES BENDER, Deputy Commissioner of  
Correction; PETER ST. AMAND, Superintendent of  
MCI-Cedar Junction,

Defendants.

Civil Action No. 07-11457-JGD

**PLAINTIFF ALBERT FORD'S MOTION *IN LIMINE* TO PERMIT HIS  
APPEARANCE AT TRIAL IN CIVILIAN CLOTHING AND WITHOUT SHACKLES**

Plaintiff Albert Ford respectfully moves *in limine* for an order permitting him to appear at trial in civilian clothing instead of a prison uniform. Further, Mr. Ford respectfully requests that the Court order that he not be shackled in front of the jury.

Mr. Ford has a constitutional right to a fair jury trial. *See In re San Juan Star Co.*, 662 F.2d 108, 118 (1st Cir. 1981) (recognizing existence of right to fair trial in civil cases); *Bailey v. Sys. Innovation, Inc.*, 852 F.2d 93, 98 (3d Cir. 1988) (“Fairness in a jury trial, whether criminal or civil in nature, is a vital constitutional right.”); *Davidson v. Riley*, 44 F.3d 1118, 1122 (2d Cir. 1995). Accordingly, the Court “must be alert to avoid practices that may undermine the fairness of the factfinding process.” *Id.* at 1122.

Mr. Ford’s appearance in “[p]rison garb could prejudice the jury and undermine [his] right to a fair trial on damages.” *McElwain v. Harris*, No. 1:05-CV-93-JAW, 2006 U.S. Dist. LEXIS 21856, 12-13 (D.N.H. Apr. 18, 2006); *see also Sanders v. Welborn*, No. 07-cv-808-SCW, 2011 WL 1539857, at \*2 (S.D.Ill. April 21, 2011) (granting plaintiff prisoner’s motion *in*

*limine* to wear civilian clothes and appear in front of the jury with leg shackles that were hidden from view); *Smith v. Barney*, No. 3:07-CV-00049, 2009 WL 2136162, at \*1-2 (E.D.Ark. July 14, 2009) (permitting plaintiff prisoner pursuing excessive force claim to change into civilian attire each morning before trial). Requiring Mr. Ford to appear in prison attire presents a risk that jurors will not be able to see past his present status as a prisoner and consider his claims about his treatment as a pretrial detainee with open and impartial minds.

Many circuit courts have similarly expressed concern about a prisoner attending a civil trial in restraints. As the First Circuit observed in a prisoner's 42 U.S.C. § 1983 action, "placing the defendant in physical restraints should be avoided except as a last resort, lest the defendant be denied a fair trial." *Davidson v. Riley*, 44 F.3d 1118, 1122-25 (2d Cir. 1995). Similarly, the Eighth Circuit has held that rather than "parading inmate civil plaintiffs or their witnesses before the jury in shackles . . . the district court has a responsibility to ensure reasonable efforts are made to permit the inmate and the inmate's witnesses to appear without shackles during proceedings before the jury." *Holloway v. Alexander*, 957 F.2d 529, 530 (8th Cir. 1992); *see also, e.g., Lemons v. Skidmore*, 985 F.2d 354, 356-59 (7th Cir. 1993) (in a civil case brought by a prisoner pursuant to 42 U.S.C. § 1983, it was abuse of discretion to "tak[e] no steps to minimize the prejudice to [plaintiff] in having him appear to be a violent and dangerous person who required leg irons and handcuff restraints, and in failing to give a curative instruction or take any other ameliorative steps."). Allowing the jury to see Mr. Ford in shackles will distract from the jury's ability to impartially assess the issues at trial.

Finally, during the relevant time period at issue in this trial, January 2007 to April 2008, Mr. Ford was a pretrial detainee who had not been convicted of any crime. Accordingly, requiring him to appear in front of the jury would be especially prejudicial because the jury's

task is to consider damages Mr. Ford may have suffered when his status was that of a pretrial detainee, not a convicted inmate.

For the reasons above, Mr. Ford respectfully requests this Court allow him to appear at trial in civilian clothing and without shackles.<sup>1</sup>

ALBERT FORD

By his attorneys,

/s/ Timothy Syrett

Lisa J. Pirozzolo, BBO # 561922

Emily R. Schulman, BBO # 566374

Timothy D. Syrett, BBO # 663676

Dimple Chaudhary, BBO # 674845

Anant Saraswat, BBO # 676048

Wilmer Cutler Pickering Hale and Dorr LLP

60 State Street

Boston, Massachusetts 02109

Tel: (617) 526-6000

Fax: (617) 526-5000

Dated: July 5, 2011

---

<sup>1</sup> If the Court does not order that Mr. Ford appear without shackles and in civilian clothing, he respectfully requests that steps are taken to minimize the prejudice, including (1) allowing him to enter and exit the courtroom outside of the presence of the jury and (2) providing the jury with a curative instruction that it must not consider Mr. Ford's garb in its deliberations.

**CERTIFICATE OF SERVICE**

I, Timothy Syrett, hereby certify that a true copy of the above document was served upon the attorney of record for each other party through the Court's electronic court filing (ECF) system, this 5th day of July, 2011.

/s/ Timothy Syrett  
Timothy Syrett, BBO # 663676